...ME COURT, U.S.

MAR 8 1967

JOHN F. DAVIS, CLERK

In The

Supreme Court of the United States

October Term, 1966

No. 1081

VISIDOR CORP., a corporation of the State of New Jersey,

Petitioner,

v.

BOROUGH OF CLIFFSIDE PARK, a municipal corporation of the State of New Jersey,

Respondent.

BRIEF OF RESPONDENT IN OPPOSITION TO GRANTING WRIT OF CERTIORARI

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Martin Lutz Appellate Printers, Inc.
New York • Philadelphia • Newark • New Brunswick.

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The first, and perhaps the paramount reason why the Petition for a Writ of Certiorari should not be granted in this case is that petitioner has not shown that it has any "right of property" or "right of action" of which it has been deprived.

If the respondent had followed the New Jersey Statutory procedure, and obtained the approval of the New Jersey Director of Motor Vehicles in advance, the placing of a "one-way" street sign

would be a proper exercise of the police power, for which the Respondent Borough would not be liable for damages, 18 McQuillen Municipal Corporations, (3rd Ed. 1950) Sec. 53.35 pp. 227-231; 3 Yokeley Municipal Corporations (1958), Sec. 493, p. 177; Rhyne on Municipal Corporations (1957) p. 431.

Not a single case, from New Jersey or any other jurisdiction, has been cited by the petitioner in the briefs filed in the trial court or the New Jersey Appellate courts where it was held that a tenant was entitled to recover money damages from a municipality by reason of the placing of an unauthorized traffic direction sign. The authorities upon which petitioner relied in the New Jersey courts are cited and distinguished in the opinion of the New Jersey Supreme Court, a copy of which is annexed to the Petition for Certiorari. 48 N.J. 214, 225 A.2d 105 (1966).

Petitioner is seeking Certiorari on the ground that its "rights" under Amendments V and XIV of the United States Constitution have been violated. It is hornbook law that where a litigent relies upon a constitutional question, it must be specially pleaded and raised in the first instance. Pan Am Petroleum Corp. v. Superior Court of Delaware, 366 U.S. 656, 81 Sup. Ct. 1303, 6 L. Ed. (2) 584 (1961); 16 Am. Jur. "Constitutional Law" Sec. 116 p. 307.

Petitioner's Complaint in the trial court, the Pretrial Order and the briefs filed in all the New Jersey Courts fail to raise any question of any violation of petitioner's "rights" under the United

States Constitution. This issue is being raised for the first time in the Petition for Certiorari, without having been raised in, or passed upon by the New Jersey courts.

It is submitted that petitioner's application for Certiorari should be denied.

Respectfully submitted,

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